

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF UTAH, IN AND FOR UTAH COUNTY

PROVO RESERVOIR COMPANY, :  
Plaintiff, : FINDINGS OF FACT AND ORDER  
-vs- : AUTHORIZING THE CONSTRUCTION  
PROVO CITY, et al, : AND INSTALLATION OF MEASURING  
: GATES  
Defendant. :

The above matter having come before the Court on petition of the Lake Bottom Canal Company, a corporation, one of the defendants in the above entitled action, and an order requiring the defendants named in said petition to show cause why the relief prayed for in said petition should not be granted, and service of said petition and order to show cause having been made duly and regularly upon said parties, except Hugh L. Syme, Clara Gay, Fred Martinez, George Long and Owen Davis, it appearing that said parties not served having only a nominal interest in the matters mentioned in said petition, and all of said parties named in said petition and served with copies of said petition and order as heretofore stated, except the defendant, Esthma Tanner, having failed to appear, and the said Esthma Tanner having filed her objections to the granting of said petition, and the said matter having come on to be heard before the Court on the 6th day of January, 1934, and thereafter, and evidence having been presented in support of said petition and in support of said protest and objections, and the matter having been duly presented to the Court upon oral and written testimony and the arguments of Counsel, and the Court now being fully advised in the premises makes and enters the following Findings of Fact:

FINDINGS OF FACT

1. That the petitioner is a corporation organized and existing under and by virtue of the laws of the State of Utah, and that it is one of the defendants in the said above entitled

cause, and is the owner in trust of a portion of the waters of Provo River and Spring Creek in Utah County, State of Utah; that said corporation is now, and for many years last past has been, engaged in the regulation, control and distribution of a portion of the waters of said Provo River and said Spring Creek among and to its stockholders and to those entitled to the use of said waters.

2. That T. F. Wentz, of Provo, Utah County, Utah, now is, and for many years last past, has been, the Commissioner appointed by the above entitled Court to regulate, and distribute <sup>said</sup> the waters of Provo River and said Spring Creek among the parties entitled to the use thereof, and with further power and authority from time to time to construct or cause to be constructed dams, weirs, and regulating appliances as are necessary to the equitable and economical distribution of said waters pursuant to the terms of the Decree entered in the said above cause.

3. That said Court has, by proper provision in said Decree, retained jurisdiction of said cause and the subject matter litigated therein for the purpose of making orders, rules, and regulations that shall be necessary for the regulation and control and distribution of the waters of said Provo River system pursuant to the Decree entered in said cause.

4. That, Sidney Harding, A. L. Tanner, Esthma Tanner, Frank Williamson, Arthur Clyde, Rex Griffith, J. M. Bonny, Margaret Gard, B. H. Jolly, Henry White, Owen Davis, Frank Jones, Reed Nuttal, Hugh L. Syme, W. A. Nuttal, John Kuhn, Mary A. Brown, Reed Brown, Charles H. Davies, Clara Gay, J. Joseph Johnson, Fred Martinez, J. H. Hortt, A. F. Snyder, George Long, Elmer Lee, Mrs. L. S. Gibson, Mac Brickey, Frank Bethers, Heber Harding, and Ashted Taylor, and each and all of said parties, have the right

and claim the right to the use of certain waters of said Provo River system, along the course of Spring Creek and Lake Bottom Channel from Provo River, as particularly set out in the said decree in the above entitled cause.

5. That all of said parties, according to the terms of said decree, are on schedule and are given water tickets to use their respective quantities of water for periods of time, on rotation system; that, there is not now gates or measuring devices to properly turn out and measure the quantity of water to which said parties are entitled; that there should be constructed and installed, before the season of 1934, head-gates and appliances for the diversion and measurement of said water, and the same are necessary for the proper carrying out of the terms of said decree, and for the equitable and economical distribution of the waters claimed by said parties respectively and awarded to said parties respectively, and their predecessors in title and interest, by the terms and provisions of said decree.

6. That, each and all of said parties divert water above and along the course and channels that supply the canal of this petitioner, and in order that this petitioner may receive the quantity of water to which it is entitled by said decree, said parties must be controlled and limited to the quantity of water to which they are respectively entitled.

7. That the following equipment is necessary for the proper distribution of the waters decreed to the various parties herein named, and should be installed at the points designated, to-wit:

At Diversions Nos. 1, 2, 3, 5, and 7 :-

15 Inch Calco Meter Gate, four foot frame; 7 feet of No. 16 corrugated steel pipe attached; and set of galvanized wells 2 feet high; at cost each of \$31.57.

WATKINS AND HOLBROOK  
ATTORNEYS AT LAW  
ROUNDY BLDG.  
PROVO, UTAH

At diversion No. 6.

18 Inch Calco Meter Gate; 4 foot frame; 7 feet of No. 16 corrugated steel pipe attached; and set of galvanized wells 2 feet high; at cost each of \$40.37.

and the same are necessary to the proper diversion and distribution of said waters and under the Decree of this Court.

8. That the location of said points of diversion is as hereinafter set forth together with the name of each water user interested therein, the number of acres of decreed water right of each respectively, and the estimated amounts that said regulating and measuring devices will cost and which should be assessed to the water users therein named, as follows, to-wit:

Diversion No. 1

Near North line of Sidney Harding, present heading, West Side Spring Creek; immediately below Calco Gate flume to be constructed over Spring Creek to also serve ditch flowing to East.

Name	Acres	Amount
Sidney Harding	7.52	\$3.00
A. L. Tanner	30.00	11.85
Esthma Tanner	28.00	11.10
Frank Williamson	8.88	3.55
Rex Griffith	1.75	0.70
Arthur Clyde	3.50	1.37
Totals . . . . .	79.65	\$31.57

At Diversion No. 2, which is about 500 feet of the South line of Esthma Tanner's property, present heading on the West Side of Spring Creek, it is not desireable, nor reasonably necessary for the proper distribution and measurement of said waters to construct Calco gate flume to serve the Esthma Tanner acreage consisting of eight acres; that at this point it is necessary that a measuring device consisting of a measuring and regulating weir be installed; that a standard weir constructed of cement at the point described in diversion No. 2 as described in said petition is sufficient to accomplish the purposes of controlling

regulating, and distributing said waters at this point.

Diversion No. 3.

Near North line of A. L. Tanner property, present heading, diverting from Lake Bottom Channel from river, on West side.

Name	Acres	Amount
Estham Tanner	7.00	\$31.57

Diversion No. 4.

Clyde Ditch.

Clyde Ditch at present heading, from Lake Bottom Channel, near South line of Esthma Tanner. 18 Inch Calco Meter Gate.

Name	Acres	Amount
J. M. Bonny	4.0	\$3.40
Margarett Gard	3.51	3.00
B. H. Jolly	6.0	5.10
Henry White	3.21	2.75
Frank Jones	5.0	4.25
Reed Nuttal	6.15	5.25
Hugh L. Syme	11.0	9.37
W. A. Nuttal	8.50	7.25
Totals . . . . .	47.37	\$40.37

Diversion No. 5.

Davis Ditch, at Northeast corner of Owen Davis property; to South and West.

Name	Acres	Amount
Owen Davis	12.05	\$18.07
J. M. Bonny	9.0	13.50
Totals . . . . .	21.05	\$31.57

Diversion No. 6.

Nuttal- Brown Ditch, at present heading of Nuttal Ditch, 250 feet upstream from present heading of Brown Ditch, combining these diversions.

Name	Acres	Amount
W. A. Nuttal	24.69	\$8.55
John Kuhn	3.0	1.05
Mary A. Brown	13.12	4.60
Reed Brown	5.50	1.90
Charles H. Davis	23.50	8.20

Clara Gay	2.0	\$0.70
J. Joseph Johnson	4.85	1.70
Fred Martinez	3.59	1.25
J. H. Hortt	1.25	0.45
A. F. Snyder	7.42	2.60
George Long	3.51	1.22
Elmer Lee	2.0	0.70
Mrs. L. S. Gibson	5.3	1.85
Mac Brickey	1.75	0.60
Frank Bethers	14.30	5.00
Totals . . . . .	115.78	\$40.37

Diversion No. 7.

Partridge Ditch, present heading, East side Spring Creek.

Name	Acres	Amount
Heber Harding	5.00	\$4.85
J. Joseph Johnson	5.05	4.90
Ashted Taylor	22.46	21.82
Totals . . . . .	32.51	\$31.57

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9. That/<sup>it</sup>is impossible, by reason of the fluctuating market prices of labor and materials to be used in the construction of said measuring and regulating devices, to ascertain definitely the cost of said devices.

10. From the foregoing, the Court finds that the said petitioner is entitled to an order of this Court authorizing and directing said water Commissioner to have constructed and<sup>installed</sup> said regulating and measuring devices as found to be necessary in said Findings, and for an order assessing interested water users and defendants in this cause of action with the reasonable costs of constructing and installing said measuring devices, and for an order directing said parties to pay to the Clerk of said Court the costs and assessments herein authorized to accomplish the purposes set out in said petition.

NOW, THEREFORE, the Court having made its Findings of Fact and Conclusions of Law in the above matter, it is THEREFORE

ORDERED, that the said Commissioner, T. F. Wentz, be and he is hereby directed and authorized to purchase the measuring devices specifically described in the Findings herein, and to pro rate the purchase price and costs and delivery of said devices to the defendants named in said petition according to their acreage and water rights as set forth in said Findings and petition; that said Commissioner is further directed to give notice to said defendants of their pro rata share of said purchase price of said devices, and said defendants are directed to pay said amounts to the <sup>clerk of the Court</sup> ~~said Commissioner~~ within ten days after receipt of notice thereof, and upon failure to pay the same within the said ten days it is ordered that said Commissioner shall withhold further distribution of waters to the parties so in default until the same shall be paid.

IT IS FURTHER ORDERED that upon the delivery to said parties by said Commissioner of the measuring devices specifically described in said Findings that said defendants shall at their own expense and under the supervision and direction and to the satisfaction of the said Commissioner, install said gates at the points designated in said petition and in said Findings; and

IT IS FURTHER ORDERED that the said Esthma Tanner shall furnish the materials for, and construct a standard weir at Diversion point No. 2 as specified in said Findings, at her own expense; that said construction and installation shall be under the supervision and direction of the said Commissioner.

IT IS FURTHER ORDERED that unless said parties proceed within reasonable time to install and construct the said measuring devices heretofore ordered, that said Commissioner shall be and he is hereby authorized to withhold further distribution of waters



to the said parties who have <sup>1</sup>so failed to construct and install said measuring devices found in the Findings herein to be necessary and herein ordered to be installed and constructed, until such time as said parties shall comply with the provisions of this order respecting the installation and construction of the said measuring devices heretofore referred to.

Done in open Court this 14 day of April, A. D. 1934.

  
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Judge



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Frank S. Johnson  
Isabella Christensen

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